





NEBRASKA UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

- Adopted in April of 2012
- Takes effect on January 1, 2013
- Based on the Uniform Real Property Transfer on Death Act that was drafted by the Uniform Law Commission in 2009



Definitions

- Beneficiary – A person designed to receive property in a Transfer on Death Deed
- Joint owner – an individual who owns property concurrently with one or more individuals with a right of survivorship
- Property – an interest in real property located in Nebraska which is transferable on the death of the owner
- Transferor – an individual who makes a Transfer on Death Deed



Transfer on Death Deed

- A Transfer on Death (TOD) Deed transfers property to one or more beneficiaries effective at the transferor's death



Transferring Agricultural Land

- If the property is agricultural land, the transferor may designate the disposition of the growing crops to the transferor's estate or to one or more the designated beneficiaries. If the deed doesn't specify, then the crops transfer to the transferor's estate.



Revocability

- A TOD Deed is revocable, even if the deed or another instrument contains a contrary provision.
- A TOD Deed can be revoked by a new TOD Deed that revokes the original deed, or
 - An instrument of revocation that expressly revokes the deed, or
 - An inter vivos deed that expressly or by inconsistency revokes the TOD Deed.
- A Deed of joint owners is only revoked if it is revoked by all of the living joint owners who were transferors.



Capacity

- The capacity required to make or revoke a Transfer on Death Deed is the same as the capacity required to make a will.



Executing a TOD Deed

- Must be signed by the transferor or some person in his or her presence at his or her direction.
- Must be signed by two uninterested witnesses.
- All three signatures must be notarized.



Elements of a TOD Deed

- Essential elements and formalities of a properly recordable inter vivos deed:
 - Must state that the transfer to the designated beneficiary is to occur at the transferor's death
 - Must contain warnings provided in the statute
 - Must be recorded within 30 days after being executed, before the transferor's death, and at the County Recorder of Deeds office



Warnings

- **WARNING:** The property transferred remains subject to inheritance taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties as provided by law.
- **WARNING:** The designated beneficiary is personally liable, to the extent of the value of the property transferred, to account for Medicaid reimbursement to the extent necessary to discharge any such claim remaining after application of the assets of the transferor's estate. The designated beneficiary may also be personally liable, to the extent of the value of the property transferred, for claims against the estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration to the extent needed to pay such amounts by the personal representative.
- **WARNING:** The Department of Health and Human Services may require revocation of this deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order to qualify or remain qualified for Medicaid assistance.



A TOD Deed is Effective without:

- Notice or acceptance by the designated beneficiary during the transferor's life
- Consideration



During the transferor's life time

- A TOD Deed doesn't affect the owner's right to transfer or encumber the property
- A TOD Deed doesn't affect an interest or right of the transferee
- A TOD Deed doesn't affect an interest or right of a secured or unsecured creditor or future creditor of the transferor
- A TOD Deed doesn't affect transferor's or beneficiary's eligibility for public assistance
- A TOD Deed doesn't create a legal or equitable interest for the beneficiary
- A TOD Deed doesn't subject the property to claims of the creditors of the beneficiary.



The beneficiary

- Must survive the Transferor by one hundred twenty hours (5 days), or as otherwise stated in the deed.
- Multiple beneficiaries take the property in equal and undivided shares, with no right of survivorship.
- Takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death.
- May disclaim all or part of his or her interest in the property .



Joint ownership

- Upon the death of one owner, the remaining joint owner retains title.
- Upon the death of the last surviving joint owner, the TOD Deed is effective.



Bringing a court action

- The following persons can petition the court to construe a POA or review the agent's conduct
 - The principal
 - The agent
 - The principal's spouse, parent or issue
 - A presumptive heir or devisee under an unrevoked will
 - A person named as a beneficiary upon the principal's death
 - A governmental agency with regulatory authority to protect the welfare of the principal
 - The principal's caregiver, or someone that demonstrates sufficient interest in the principal's welfare
 - A person asked to accept the power of attorney



Other Debts of the Estate

- If other assets of the estate of the transferor are insufficient to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration, a transfer under the Nebraska Uniform Real Property Transfer on Death Act subjects the beneficiary to personal liability as provided in this section to the extent needed to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration.



Medicaid Claims

- A beneficiary to whom an interest is transferred by a Transfer on Death Deed shall be personally liable to account for Medicaid reimbursement to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's estate. Such liability shall be limited to the value of the interest transferred to the beneficiary. The right to recover applies to medical assistance provided before, at the same time as, or after the signing of and the recording of the transfer on death deed.



Qualifying for Medicaid

- The Department of Health and Human Services may require revocation of a Transfer on Death Deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order for the transferor to qualify or remain qualified for Medicaid assistance.



To change title

- A death certificate is filed with the County Recorder



How to reach Legal Aid

- Online at www.legalaidofnebraska.com
- AccessLine®:
 - (402) 348-1060
 - (877) 250-2016
- ElderAccessLine®:
 - (402) 827-5656
 - (800) 527-7249